



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 15, 1995

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1235

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35957.

You explain that the City of Houston (the "city") is the subject of an on-going investigation originated by the U.S. Department of Housing and Urban Development ("HUD") that stems from complaints of racial and economic discrimination with regard to certain of the city's neighborhood traffic projects. The city has received an open records request for certain records pertaining to one of those complaints regarding the proposed Northbrook Neighborhood Project, also known as "the Bob White closing." Specifically, the requestor seeks the following records:

Results of traffic counters in Northbrook Addition taken last spring
(May, 1995).

Information pertaining to HUDs [*sic*] decisions.

Ongoing information concerning the status of our project.


You state that you have released to the requestor a few of the requested documents. You contend, however, that the remaining requested information is excepted from required public disclosure under sections 552.103 and 552.107(1) of the Government Code.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) at 4 and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

In accordance with other open records letters this office has issued to the city with regard to this and similar matters, we conclude that you have met your burden in establishing that the requested records "relate" to reasonably anticipated litigation. *See* Open Records Letter Nos. 95-687 (1995), 95-656 (1995), 95-545 (1995), 95-544 (1995). Further, based on your representation that HUD personnel have not seen the records at issue here, we conclude that the city may withhold the records you submitted to this office in their entirety pursuant to section 552.103 of the Government Code until such time that the records are shared with HUD or until the litigation has concluded.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Rebecca L. Payne
Assistant Attorney General
Open Records Division

RLP/RWP/rho

Ref.: ID# 35957

Enclosures: Submitted documents

cc: Ms. Barbara Bertin
11010 Southwold
Houston, Texas 77096
(w/o enclosures)

¹Because we resolve your request under section 552.103, we need not address your section 552.107(1) arguments.